29

HIGH COURT OF CHHATTISGARH: BILASPUR

Single Bench: **Hon'ble Shri Dilip Raosaheb Deshmukh, J.**

W.P. (L) No. 7235 of 2007

Petitioner **(Non-applicant No.3)**	Sarpach, Gram Panchayat Joratari, Village Joratari, Tehsil and Distt. Rajnandgaon (CG) through:- its Sarpanch Smt. Anita Bai Bandhe, W/o Ramswaroop Bandhe, aged about 28 years, R/o Village Joratarai, Tahsil and District Ranjnandgaon (CG)
	Versus
Respondents	1. Labour Court, Rajnandgaon, Acting as Commissioner, under Workmen Compensation Act, Rajnandgaon (CG)
(Applicant)	2. Shakun Bai, W/o Premsingh Sahu, aged about 36 years, R/o Village Joratarai, PS. Lalbagh, District Rajnandgaon (CG)
(Non-applicant No.1)	3. The Collector District Rajnandgaon (CG)
(Non-applicant No.2)	4. The Chief Executive Officer Zila Panchayat Rajnangaon (CG)
(Non-applicant No.4)	5. President, Sinha Samaj, through:- Anjori, S/o Tijau, aged about 42 years, Village Joratari, Post-Bori, P.s. Lalbagh, District Rajnandgaon (CG)
	6. Santosh Shrivastava, S/o Vishwajeet Shrivastava, Ex-Sarpanch, r/o Near Old Krishsak Yug Press, Brahamanpara, District Rajnandgaon (CG)

Writ petition under Article 227 of the Constitution of India

Present: Shri Anup Mazumdar, counsel for the petitioner.
Shri Akhil Agrawal, PL for the State.

ORAL ORDER
(Passed on 14.12.2007)

This petition is being disposed of finally at the stage of admission without notice to the respondents.

(2) Heard.

(3) The petitioner is aggrieved by an order dated 5.10.2007 passed by the Commissioner for .Workmen's Compensation, Rajnandgaon (CG) (hereinafter referred to as 'Commissioner'),

whereby application for setting aside ex-parte order dated 27.6.2006 was summarily rejected.

(4) Brief facts are that the petitioner/non-applicant No.3 in the application for compensation filed by the respondent No.2 remained absent before the Commissioner. As a result, an ex-parte order awarding compensation with interest and penalty was passed against the petitioner on 27.6.2006. The petitioner moved an application under Order-9 Rule-13 of the Code of C.P.C. (hereinafter referred to as the Code) read with Section 151 of the Code for setting aside the ex parte order dated 27.6.2006 along with an application under Section 5 of the Limitation Act. The Commissioner passed the following order:-

"5/10/07"

"उभयपक्ष अधि0 उपस्थित।

आवेदक द्वारा प्रस्तुत आवेदन पत्र अत्यंत विलंब से प्रस्तुत किया गया है, मूल प्रकरण का निराकरण गुण दोष पर किया गयाा है। अतः आवेदक द्वारा प्रस्तुत आवेदन निरस्त किया जाता है। प्रकरण पंजी से प्राप्त किया जाए, अभिलेखाकार में सुरक्षित रखा जाए।

Commissioner
For Workmen's Compensation
Rajnandgaon (CG)"

(5) Learned counsel for the petitioner urged that the said order whereby the application under Order-9 Rule-13 of the Code was summarily rejected is bad in law because it does not show application of mind or any good reason for dismissal of the application under Order-9 Rule-13 of the Code or the application under Section 5 of the Limitation Act.

(6) Having considered the submission of the learned counsel of the petitioner, this petition deserves to be allowed at this stage. The dismissal of the application under Order-9 Rule-13 of the Code merely on the ground that the case was decided on merits was wholly unwarranted and shows complete lack of application of mind to the

merit of the application under Order-9 Rule-13 of C.P.C or the application under Section 5 of the Limitation Act.

(7) In this view of the matter, the writ petition is allowed. The impugned order dated 5.10.2007 passed by the Commissioner is set aside. The matter is remitted to the Commissioner with a direction to consider the application under Order-9 Rule-13 of the Code or the application under Section 5 of the Limitation Act on merit and to pass a speaking order on the said applications.

C.C. as per rules.

Sd-/
Dilip Raosaheb Deshmukh
Judge

Priya